

***United States Court of Appeals
for the Second Circuit***



REPLY BRIEF

ORIGINAL
75-7505

To be argued by
ROY E. POMERANTZ.

United States Court of Appeals
For the Second Circuit.

CROWN FINANCIAL CORPORATION,

Plaintiff-Appellee,

against

WINTHROP LAWRENCE CORPORATION and
LAMMOT DuPONT COPLAND, JR.,

Defendants,

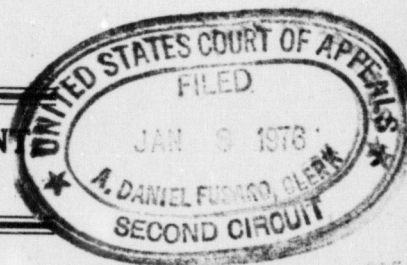
and

DIVERSIFIED GENERAL, INC.,

Intervenor-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

REPLY BRIEF OF INTERVENOR-APPELLANT
DIVERSIFIED GENERAL, INC.



K. L. EDLEMAN, ELSE & WILSON,
Attorneys for Intervenor-Appellant,
420 Lexington Avenue,
New York, N. Y. 10017
(212) 532-7000

Of Counsel:

ROY E. POMERANTZ,
STEPHEN A. POSTELNEK.

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POINT I

THE FILING OF THE PETITION IN
BANKRUPTCY IS CONSTRUCTIVE NOTICE
AND AUTOMATICALLY INVOKES THE STAY
ORDER

Plaintiff-Appellee, CROWN, asserts in its Reply Brief that the stay order without proper notice given does not affect the validity of the judgment. Intervenor-Appellant, DIVERSIFIED has demonstrated in its Main Brief that the weight of authority holds that the filing of the Petition in Bankruptcy is a caveat to all the world and, in effect, an attachment and injunction by the Bankruptcy Court, which effectively stays all actions and proceedings against the bankrupt.

In Collins v. Welsh, 75 F.2d 894, 898 (9th Cir. 1935), a Sheriff's sale was enjoined the day before it was to have been held on the grounds that the debtor's property was properly in the jurisdiction of the Bankruptcy Court, notwithstanding the fact that the Sheriff did not receive any actual notice of the application for the stay. The Ninth Circuit found this peremptory jurisdiction of the Bankruptcy Court to be authorized by the Bankruptcy Act.

Likewise, in Hanover National Bank v. Moyses, 136 U.S. 181 (1901), the Supreme Court was faced squarely with the question in controversy. The Court said:

Notwithstanding these provisions, it is insisted that the want of notice of filing the petition is fatal because the adjudication per se entitles the bankrupt to a discharge, and that the proceedings in respect of discharge are in personam, and require personal service of notice.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CROWN FINANCIAL CORPORATION,

Plaintiff-Appellee,

- against -

WINTHROP LAWRENCE CORPORATION and

LAMMOT DUPONT COPELAND, JR.,

Defendants

and DIVERSIFIED GENERAL, INC.

Intervenor-Appellant

REPLY BRIEF OF
INTERVENOR-APPELLANT DIVERSIFIED
GENERAL, INC.

The adjudication does not in itself have that effect and the first of these objections really rests on the ground that notice provided for is unreasonably short, and the right to oppose discharge unreasonably restricted. . . .

Nor is it possible to concede that personal service of notice of the application for a discharge is required. 186 U.S. at 102, 103

It is clear that the filing of the Petition in Bankruptcy is automatic notice to the world and any subsequent proceedings had against a bankrupt are void.

Plaintiff-Appellee CROWN, contends in its Reply Brief that the Southern District of New York granted its motion for an inquest preference with the knowledge that there were conflicting newspaper reports regarding a possible petition under Chapter XI of the Bankruptcy Law filed on behalf of WINTHROP LAWRENCE. If CROWN is relying upon the Court's granting the motion for an inquest preference to support its contention that the judgment of November 25, 1970 is valid, despite the stay order of the Maryland Bankruptcy Court, it is respectfully submitted that the record below does not reflect in any way the thinking of the Court in granting the inquest preference.

POINT II

11 U.S. CODE 44(g), SECTION 21g
OF THE BANKRUPTCY ACT DOES NOT
SUPPORT PLAINTIFF-APPELLEE'S
POSITION THAT THE STAY ORDER WAS
NOT APPLICABLE TO THE ACTION

In its Reply Brief, CROWN cites Section 21g of the Bankruptcy Act and contends that under the circumstances, since neither the bankrupt, receiver, referee or creditors took any steps to record the petition for the arrangement in Madera County, they have all the rights of a lien holder without notice. Section 21g does not apply to the issue herein involving the litigation between a creditor and a bankrupt debtor. CROWN was not a lienor of the bankrupt debtor's property at the time the stay order was issued by the Maryland Bankruptcy Court and did not become a lienor until such time as the judgment of November 25, 1970 was entered and docketed against real property owned by WINTHROP LAURENCE, the judgment debtor.

Since the quoted section of the Bankruptcy Act is not applicable to the issue of the effect of the stay order upon the subsequently acquired judgment, it is respectfully submitted that the weight of authority holds, as set forth in Intervenor-Appellant, DIVERSIFIED'S Main Brief, that the stay order was effective and valid at the time it was issued on November 12, 1970 and the subsequently acquired judgment of November 25, 1970 was void.

POINT III

IT IS IRRELEVANT WHETHER OR NOT
THE CALIFORNIA LIEN IS AFFECTED
BY THE BANKRUPTCY COURT'S STAY
ORDER

Plaintiff-Appellee, CROWN contends that the lien filed in California is not contrary to the California State Laws or Federal Bankruptcy Laws. That point is not at issue in this appeal since that lien grows out of the judgment of November 25, 1970 entered by the Southern District of New York and the issue before this Court is the validity of that judgment, not the validity of the subsequent lien. On its face, the lien is based upon a valid judgment certified by the United States District Court for the Southern District of New York, and until that judgment can be shown to be void, that lien will be considered valid by the California Courts and in no way affected by the Bankruptcy Act. Once the order vacating that judgment is entered by this Court, then the lien will fall.



CONCLUSION

For the above reasons and for the reasons recited in the Main Brief of DIVERSIFIED, it is respectfully submitted that the Court below was in error in denying DIVERSIFIED'S Motion to Intervene, was in error in refusing to vacate the judgment against WINTHROP LAURENCE on the grounds that it was void, and was in error in taking the position that the matter should be properly prosecuted by the receiver of WINTHROP LAURENCE.

WHEREFORE, it is respectfully prayed that the order of Judge Metzner dated and entered on July 30, 1975 be reversed and DIVERSIFIED be permitted to intervene in the action and the Court below be directed to vacate the judgment against WINTHROP LAURENCE of November 25, 1970 on the grounds that said judgment is void and that Intervenor-Appellant, DIVERSIFIED have such other and further relief as may be just in the premises.

Respectfully submitted,

KROLL, EDELMAN, ELSER & WILSON
Attorneys for Intervenor-Appellant
Office & P. O. Address
420 Lexington Avenue
New York, NY 10017

OF COUNSEL:
ROY E. POMERANTZ
STEPHEN A. POSTELNEK



Services of three (3) copies of

the within Reply Brief is

heretby admitted this 29 day

of December, 1975

Despina B. Knes (Secretary to Volk Neuman & Gr
Attorney for Plaintiff - Appellee

ORIGINAL

75-7505

United States Court of Appeals

For the Second Circuit.

CROWN FINANCIAL CORPORATION,
Plaintiff-Appellee,
against

WINTHROP LAWRENCE CORPORATION and
LAMMOT D-PONT COPELAND, JR.,
Defendants,
and

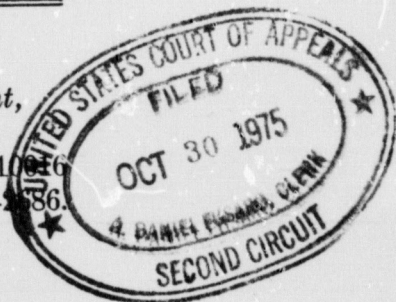
DIVERSIFIED GENERAL, INC.,
Intervenor-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

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P/S

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UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

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CROWN FINANCIAL CORPORATION,

Plaintiff-Appellee,

-against-

WINTHROP LAWRENCE CORPORATION and LAMMOT DU PONT
COPELAND, JR.,

Defendants,

and

DIVERSIFIED GENERAL, INC.,

Intervenor-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

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DOCKET ENTRIES.

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DATE	PROCEEDINGS	Da Jud
Apr. 4, 70	Filed complaint and issued summons.	
Sept. 29-70	Filed Notice of Motion re: Dismiss Complaint Ret. 10/6/70.	
Sept. 29-70	Filed Amended Memorandum in support of the Motion.	
Oct. 1-70	Filed ANSWER of Winthrop Lawrence Corp. to complaint.	
Oct. 2-70	Filed Notice of Motion re: Summary Judgment. Ret. 10/13/70. (by plaintiff)	J&N
Oct. 2-70	Filed Memorandum of Law in support of pltf's motion for summary judgment.	
Oct. 2-70	Filed Affidavit in opposition to deft. Copeland's motion for dismissal.	
Oct. 2-70	Filed Memorandum in opposition to motion of deft. Lamot du Pont Copeland, Jr. to dismiss.	
Oct. 2, 70	Filed Order of Attachment. Ordered that pltf's undertaking be fixed in the sum of \$25,000.00. Ordered that the U.S. Marshal of the SDNY, upon filing of pltf's undertaking, levy before final judgment, upon such property in which the deft has an interest and upon such debts owing to the deft as will satisfy the pltf's demand of \$252,515.34, together with interest costs and the fees and expenses of the U.S. Marshal. Wyatt J. M/n	
Oct. 5, 70	Filed Undertaking on Attachment. (\$25,000.00) Insurance Co. of North America	
Oct. 28-70	Before Ryan, J. Hearing held. Summary Judgment granted as to deft. Lawrence. Stayed as to deft. Copeland. So ordered.	
Oct. 26, 70	Filed summons with marshal's ret. Served Winthrop Lawrence Corp. by Max Block Jr. on 9-14-70	
	Served Lamot Du Pont Copeland Jr. by personally on 9-8-70	
Oct. 29-70	Filed MEMO.END. on motion papers filed 10/2/70. The motion of plaintiff for summary judgment against the Debtor and the Debtor's cross-motion to dismiss are stayed and marked "off the motion calendar" subject to any further application upon due notice to restore said motion, if and when the aforesaid stay is vacated. So ordered. The Referee's stay does not apply to the action insofar as the co-defendant WINTHROP LAWRENCE CORP. is concerned, etc. etc. (see memo) So ordered. Ryan, J. (mailed notice)	
Oct. 29-70	Filed MEMO.END. on motion papers filed 9/29/70 (MOTION #81) Same as previous entry.	
Nov. 4, 70	Filed pltf notice to take deposition of deft	
Nov. 23-70	Filed Notice of Motion for Preference.	
Nov. 23-70	Filed MEMO.END. on motion for preference. Motion is granted to the extent that the deputy clerk for Calendars is to place this Inquest at the head of the #4 Calendar and at the head of the Civil Trial Pool Calendar immediately upon the filing hereof. It is so ordered. Sugarman, C.H.J. (mailed notice).	
Nov. 21-70	Before Metzner, J. Inquest held and concluded. Decision Reserved.	
Nov. 24-70	Filed OPINION #37204. Metzner, J. By order dated 10/28/70 plaintiff was granted summary judgment on its claim against the corporation with the amount thereof to be fixed after inquest. *****Applying the interest rate called for by the note to the unpaid balance, I find that the amount is \$258,362.21 to which must be added the sum of \$38,754.33, representing the 15% collection fees allowed by the note. Judgment should therefore be entered in the sum of \$297,116.54. The above shall constitute findings of fact and conclusions of law required by FRCP 52. So ordered. Metzner, J. (mailed notice).	
Nov. 25, 70	Filed JUDGMENT #71,104 Ordered that pltf have judgment against the deft., Winthrop Lawrence in the amount of \$297,116.54 Clerk. -mailed notice. Ent. 11/30/70. Ent. 11/30/70	
	MEMO.END. The judgment as amended by the Clerk is correct. The inquest was on the summary judgment granted against the Corporation only. So ordered. Metzner, J.	
Nov. 28, 71	Filed Transcript of record of proceedings, dated 11-24-70	
Nov. 25, 72	Filed True Copy of Order of Attachment filed 10-2-70 with Marshal's return. Served First National City Bank by V. A. Franz, Asst Cashier on 10-7-70.	

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DOCKET ENTRIES

Date of
Judgment

- 26-72 Filed True Copy of Order of Attachment with Marshal's return --Served Bankers Trust Co. by Eugene Gannon, Counsel Bankers Trust Co. on 10-15-70.
- 26-72 Filed True Copy of Order of Attachment with Marshal's return --Served New England Mutual Life Ins. Co. by Miss Sue Barham on 10-13-70; Served Graphic Productions Co. by Frank Ufert, Manager on 10-14-70; Unable to locate Continental American Life Ins. Co. as of 10-14-70;
- 26-72 Filed True Copy of Order of Attachment with Marshal's return --Served F. I. DuPont & Co. on 10-6-70; Served Winthrop Lawrence Corp. on 10-7-70; Served Morgan Guarantee Trust Co on 10-6-70; Served Manuf. Hanover Trust Co. on 10-6-70; Served The Chase Manhattan Bank on 10-6-70; Served First National City Bank on 10-6-70; Served Chemical Bank on 10-6-70; Served Irving Trust Co. on 10-6-70.
- 30-73 Filed plttf's notice of motion Re:opening of proceeding against the debt Lammot duPont Copeland, Jr. etc. 2-13-73. RET.
- 30-73 Filed plttf's affdvt re: copies of testimony.
- 30-73 Filed plttf's certificate of service by mail of motion 1-25-73.
- 30-73 Filed plttf's motion to vacate order staying all proceedings in this cause as against debt Lammot duPont Copeland, Jr.
- 30-73 Filed plttf's points and authorities in support of motion by plttf to vacate order staying all proceedings in this cause as against debt Lammot duPont Copeland, Jr.
- 30-73 Filed Affdvt of Richard L. Krzyzanowski.
- 30-73 Filed Affdvt of Henry S. Faus.
- 9-73 Filed MEMO-END. on motion dtd 1-30-73. This motion is marked withdrawn on application of the moving party. METZNER, J. (mn) METZNER, J.
- 9-73 Filed letter from Stuart R. Wolk to Clerk of the Court dtd 2-6-73 re: motion to reopen.
- 9-73 Filed MEMO-END. on motion dtd 1-30-73. Upon the request of the moving party this motion is marked withdrawn. METZNER, J. (mn)
- 9-73 Filed AMENDED COMPLAINT (debt Lammot duPont Copeland, Jr.)
- 27-73 Filed Order dismissing action for lack of prosecution. Metzner, J. (mailed notice).
- 5-73 Filed MEMORANDUM. Order heretofore entered on 3/26/73 dismissing this action is vacated because of previous order of Judge Ryan entered staying all proceedings in this case. Order dated 3/26/73 is null and void. Metzner, J. mn
- 4-24-75 Filed order that action is statistically closed and the clerk is directed to submit a JS-6 form to the administrative office, U. S. Courts. Metzner, J. m/n
- 5-06-75 Filed by Diversified General Inc. affirmation and notice of motion for leave to intervene and to vacate judgment entered on 11-25-70 - ret. 5-19-75
- 5-06-75 Filed by Diversified General Inc. memorandum of law in support of above motion.
- 5-16-75 Filed plttf's affdvt. of Stuart R. Wolk in opposition to Intervenor's motion under Rule 60(b)
- 5-16-75 Filed plttf's brief in opposition to intervenor's motion for Rule 60(b) relief.
- 7-30-75 Filed OPINION #42879.. Motion filed 5-6-75 for leave to intervene is denied. So ordered. - Metzner, J. m.n.
- 4-29-75 Filed by Diversified General Inc. notice of appeal to the USCA for the 2nd Circuit from order denying leave to intervene and to vacate judgment. -- copies mailed to Stuart Rodney Wolk, Esq.; Weil Gotshal & Manges, Esqs. and Paul S. Aufrechtig, Esq.

NOTICE OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

CROWN FINANCIAL CORPORATION

Plaintiff,

- against -

WINTHROP LAWRENCE CORPORATION and

LAMMOT DU PONT COPELAND, JR.,

Defendants,

and DIVERSIFIED GENERAL, INC.

Intervenor

----- x

Civil Action No. 70
Civ. 3884 CMM

NOTICE OF MOTION

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affirmation of Roy E. Pomerantz, dated the 2nd day of May, 1975, the respective exhibits thereto, and upon all prior pleadings and proceedings had herein, the undersigned, attorneys for intervenor DIVERSIFIED GENERAL, INC. (hereinafter, "DIVERSIFIED") will move this court at the United States Courthouse, Foley Square, New York, Room 2201 on the 19th day of May, 1975, 10:00 in the forenoon of that day, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 24 (a)(2) of the Federal Rules of Civil Procedure, granting DIVERSIFIED leave to intervene in this action, and for an order, pursuant to Rule 60 (b)(4) of the Federal Rules of Civil Procedure, vacating the judgment entered on November 25, 1970 against defendant WINTHROP LAWRENCE CORPORATION (hereinafter "WINTHROP LAWRENCE"), and for such other and further relief that the court may grant.

NOTICE OF MOTION

Dated: New York, New York,
May 2, 1975'

Yours, etc.

13 R.E.P.

ROY E. POMERANCE a member of
the firm
KROLL, EDELMAN, ELSEN & NELSON
Attorneys for Intervenor
DIVERSIFIED GENERAL, INC.
Office and P. O. Address
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New York, New York, 10016

To: STUART RODNEY WOLK
Attorneys for Plaintiff
CROWN FINANCIAL CORPORATION
420 Lexington Avenue
New York, New York 10017

WEIL, GOTSHAL & MANGES
Attorneys for Defendant
LAMMOT DUE PONT COPELAND, JR.
767 Fifth Avenue
New York, New York 10022

PAUL S. AUFRICHTIG
Attorney for Defendant
WINTHROP LAWRENCE CORPORATION
866 United Nations Plaza
New York, New York 10017

AFFIRMATION OF ROY E. POMERANTZ IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

CROWN FINANCIAL CORPORATION,

Plaintiff,

Civil Action No.
20 Civ. 3884 CMM

- against -

WINTHROP LAWRENCE CORPORATION and

LAMMOT DU PONT COPELAND, JR.

AFFIRMATION

Defendants,

and DIVERSIFIED GENERAL, INC.

Intervenor

-----x

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

Roy E. Pomerantz, an attorney duly admitted to practice before the Courts of this State and the United States District Court for the Southern District of New York, aware of the penalties for perjury, affirms:

He is a member of the firm of Kroll, Edelman, Elser & Wilson, the attorneys for the intervenor DIVERSIFIED GENERAL, INC. (hereinafter "DIVERSIFIED"), and he submits this affirmation in support of the within motion by DIVERSIFIED for leave to intervene and to vacate the judgment entered November 25, 1970 against defendant WINTHROP LAWRENCE CORPORATION, (hereinafter "WINTHROP LAWRENCE").

NATURE OF ACTION

Upon information and belief, this is an action on a promissory note executed by WINTHROP LAWRENCE and guaranteed by LAMMOT DU PONT COPELAND, JR. (hereinafter "COPELAND"), on

AFFIRMATION OF ROY E. POMERANTZ IN SUPPORT OF MOTION

September 12, 1969, wherein WINTHROP LAWRENCE promised to pay CROWN FINANCIAL CORPORATION (hereinafter "CROWN"), the sum of four hundred thousand dollars (\$400,000.00) 180 days subsequent to the date of execution.

On or around September 4, 1970, an action was filed in the United States District Court for the Southern District of New York, Civil Action No. 70 Civ. 3884 for judgment in the sum of \$252,515.34 with interest from August 21, 1970 and costs by CROWN against WINTHROP LAWRENCE and COPELAND.

On or around October 12, 1970, COPELAND filed a petition under Chapter XI of the Federal Bankruptcy Act in the United States District Court for the District of Delaware and obtained an order dated October 20, 1970, signed by the honorable Murray M. Schwartz, Referee in Bankruptcy restraining all actions and proceedings against COPELAND. Counsel for COPELAND apprised this Court of said order by a letter dated October 21, 1970.

On or around October 28, 1970, this Court granted a motion for summary judgment upon the default of WINTHROP LAWRENCE, in favor of CROWN and directed that judgment be entered against WINTHROP LAWRENCE in an amount to be determined and fixed after an inquest to be held on notice to WINTHROP LAWRENCE and its attorney. Said order of this Court, dated October 28, 1970, stayed the action against COPELAND pursuant to the Delaware Bankruptcy Court's stay order.

On or around November 10, 1970, WINTHROP LAWRENCE filed a petition under Chapter XI of the Federal Bankruptcy Act in the United States District Court for the District of Maryland and obtained an order dated November 12, 1970, signed by the Honorable

AFFIRMATION OF ROY E. POMERANTZ IN SUPPORT OF MOTION

Joseph D. Kaiser, Referee in Bankruptcy, restraining all actions and proceedings against WINTHROP LAWRENCE. A certified copy of the petition filed by WINTHROP LAWRENCE is annexed hereto, made a part hereof and designated Exhibit "A". A certified copy of the stay order signed by the Referee is annexed hereto, made a part hereof and designated Exhibit "B".

The petition filed by WINTHROP LAWRENCE on November 10, 1970, contained a list of creditors, among which was CROWN, for the indebtedness sued upon by CROWN in the instant action. A certified copy of the list of creditors is annexed hereto, made a part hereof and designated Exhibit "C".

On or around November 24, 1970, an inquest was held before this Court, apparently unaware of the stay order of November 12, 1970, and on November 25, 1970, pursuant to said inquest, a judgment was entered against WINTHROP LAWRENCE in the sum of \$297,116.54.

On or around December 28, 1970 CROWN caused said judgment dated November 25, 1970 to be registered and recorded by the County Clerk of Madera County, California and said judgment constituted a lien against and a cloud upon title to a certain 100 acres of real property then owned by WINTHROP LAWRENCE in Madera County, California. A copy of said judgment marked as registered and recorded in Madera County, California is annexed hereto, made a part hereof and designated Exhibit "D".

On or around June 24, 1974, the receiver for WINTHROP LAWRENCE executed a quitclaim deed to said 100 acres of real property in favor of DIVERSIFIED and DIVERSIFIED is now the owner of said real property. A copy of the aforesaid deed is annexed hereto, made a part hereof and designated Exhibit "E". However

AFFIRMATION OF ROY E. POMERANTZ IN SUPPORT OF MOTION
the registered and recorded judgment constitutes a cloud on the
title to the property now owned by DIVERSIFIED and adversely
affects the financial interest of DIVERSIFIED in that property.

NATURE OF MOTION

The within motion seeks leave to intervene on behalf of
DIVERSIFIED pursuant to Rule 24 (a) of the Federal Rules of Civil
Procedure and further seeks to vacate the judgment, dated
November 25, 1970, entered against WINTHROP LAWRENCE, pursuant
to the Rule 60 (b)(4) of the Federal Rules of Civil Procedure.
The basis for the application by DIVERSIFIED is more fully dis-
cussed below.

GROUND'S FOR APPLICATION BY DIVERSIFIED

DIVERSIFIED seeks leave to intervene in this action pur-
suant to Rule 24 (a) of the Federal Rules of Civil Procedure, in
order to move this Court to vacate the judgment entered against
WINTHROP LAWRENCE on November 25, 1970 and clear the title on
its real property. DIVERSIFIED claims an interest relating to
this property, once owned by WINTHROP LAWRENCE, now owned by
DIVERSIFIED, which has been encumbered by the judgment rendered
against WINTHROP LAWRENCE. DIVERSIFIED is so situated that the
disposition of this action has impaired its ability to protect
that interest and that interest is not protected by the existing
parties. A memorandum of law in support of this motion to
intervene is attached hereto.

DIVERSIFIED further moves this Court, if leave is
granted to intervene, to vacate the judgment against WINTHROP
LAWRENCE, pursuant to Rule 60 (b)(4) of the Federal Rules of
Civil Procedure, on the grounds that since the stay order
issued by the

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AFFIRMATION OF ROY E. POMERANTZ IN SUPPORT OF MOTION

Referee in Bankruptcy dated November 12, 1970, affectively barred all further proceedings in this action, CROWN had notice of the stay order because it was on the list of creditors of WINTHROP LAWRENCE, and the inquest held on November 24, 1970, should never have been held, therefore the judgment entered November 25, 1970 was void, as is more fully set forth in the memorandum of law in support of this motion.

WHEREFORE, your affirrant respectfully prays that DIVERSIFIED be granted leave to intervene in this action and prays that the judgment against WINTHROP LAWRENCE dated November 25, 1970 be vacated, together with such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
May 2, 1975

/s/ R.E.P.

ROY E. POMERANTZ

EXHIBIT A, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN THE MATTER OF	*	IN PROCEEDINGS
WINTHROP LAWRENCE CORP.	*	FOR AN ARRANGEMENT, ETC.
5454 Wisconsin Avenue	*	
Chevy Chase, Md. 20015	*	Case No. 14360
ES4-51cc	*	
Tax Identification No. 52-0896587	*	

* * * * *

PETITION FOR AN ARRANGEMENT
UNDER CHAPTER XI OF THE BANKRUPTCY ACT

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of Winthrop Lawrence Corp. respectfully represents unto your Honor:

1. Your Petitioner is a corporation organized under the laws of the State of New York and has its principal office at 5454 Wisconsin Avenue, Chevy Chase, Maryland.

2. Your Petitioner is engaged primarily in the business of holding stocks and other securities and providing financial assistance in connection therewith.

3. The assets of your Petitioner consist principally of stocks, bonds and securities in other corporations.

4. No bankruptcy proceedings initiated by or against your Petitioner is now pending.

5. Your Petitioner is unable to pay its debts as they mature and intends to propose an Arrangement pursuant to the provisions of Chapter XI of the Bankruptcy Act.

6. Your Petitioner has attached hereto a list of creditors and their addresses and a summary statement of assets and liabilities, and your Petitioner respectfully requests an extension of time in which to file Statement of Affairs, Schedule of assets and liabilities and a Statement of Executory Contracts.

Referred to Referee Joseph O. Kaiser,

— PAUL R. SCHLITZ — Clerk

By James C. [Signature] Deputy Clerk

Filed with November 1968 A.M.

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EXHIBIT A, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ .

WHEREFORE, your Petitioner prays this Proceeding may be had upon its
Petition in accordance with the provisions of Chapter XI of the Acts of
Congress relating to Bankruptcy.

I certify that
this is a true copy;
Attest Edsel Eskridge
Chief Clerk in Bankruptcy

WINTHROP LAWRENCE CORP.

BY: Sahantue D. G. [Signature]
V. Pres / Secy.

EXHIBIT B, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN THE MATTER OF	:	IN PROCEEDINGS FOR AN ARRANGEMENT
WINTHROP LAWRENCE CORP.	:	UNDER CHAPTER XI OF THE
	:	BANKRUPTCY ACT
	:	Case No. 14360
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:

ORDER

Upon the Petition for Arrangement under Chapter XI of the Bankruptcy Act filed herein on November 10, 1970, and the Application to Continue the Debtor in Possession filed herein on November 12, 1970, and it appearing to the satisfaction of the Court that it is to the best interest of creditors to continue the debtor in possession of its property and to authorize it to continue to manage the corporation's assets under its control until further order of the Court, it is this 12th day of November, 1970, by the United States District Court for the District of Maryland

ORDERED:

1. That the Debtor shall continue in possession of its property and shall have all the title and may exercise, consistent with Chapter XI of the Bankruptcy Act, all of the powers of the trustee appointed pursuant to Section 44 of said Act; subject, however, at all times to the Control of the Court and to such limitations, restriction, terms and conditions as the Court may from time to time prescribe.

2. That Debtor in Possession be and it hereby is authorized and directed, pending further order of this Court and subject to the Control of this Court, to continue the business of the debtor and manage the corporation's assets under its control; to

EXHIBIT B, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ

employ, discharge and fix the salaries and compensation of all agents and employees; and to do any and all things necessary or proper in the operation and management aforesaid. The compensation of the officers of the corporation shall be as follows:

Salvatore Gottuso. \$ 2500.⁰⁰ per month.

3. That Debtor in Possession be and it hereby is authorized from time to time until further order of the Court out of the funds heretofore or hereafter coming into its possession to pay all necessary current expenses of operations, including taxes insofar as such payments are necessary in connection with the preservation of the assets and operation of the business.

4. That Debtor in Possession is hereby directed to segregate and hold apart from all others, funds and monies withheld from employees or collected from others for taxes under any law of the United States or of any State or subdivision thereof and deposit same in a separate bank account and make payment thereof as required by law.

5. That Debtor in Possession shall close its present books of account and open and maintain new books of account as of the date of the filing of the Petition for Arrangement.

6. That pending the further order of the Court and during the operation and management aforesaid, the Debtor shall file reports with the Court biweekly, showing all receipts and disbursements.

7. That all Sheriffs, Marshals and other officers and their respective attorneys, servants, agents or employees and all other persons firms and corporations are hereby enjoined and

EXHIBIT B, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ

restrained until final decree from commencing or continuing any suit at law or in equity against the Debtor and from enforcing any liens upon the property of the Debtor without prior consent of this Court upon application made and with reasonable notice to all parties in interest and from in otherwise interfering with the exclusive possession, management and control by the Debtor in Possession of said property and assets of the within estate.

I certify that
this is a true copy:

Attest Eichel Eskridge
Chief Clerk in Bankruptcy

Joseph D. Kaiser
Referee

EXHIBIT C, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ.

SCHEDULE B

WINTEROP LAWRENCE CORPORATION

LIST OF CREDITORS

Italian Imports Co.
35 West Colorado Boulevard
Pasadena, California 91101

Sumner Financial Corp.
San Juna Villa #160
5821 San Juan Ave.
Jacksonville, Fla.
Fred C. Hilvert Co., Inc.
4700 N. Central Suite #312
Phoenix, Arizona 85012

Peninsular Life Insurance Co.
P.O. Box 2667
645 Riverside Ave.
Jacksonville, Fla. 332203
Hollywood Bank & Trust Co.
Hollywood
Florida 33020

America National Bank & Trust
Bowling Green
Kentucky 42101

National Bank of Tulsa
Tulsa
Oklahoma 74100

First National Bank of Atlanta
Atlanta
Georgia 30300

Webster State Bank
Webster
Texas 77598

Hawaii National Bank
Hawaii

Nixon State Bank
Nixon
Texas 78140

First National Bank
Mobile
Alabama 36600

U. S. National Bank

Marshall National Bank
Marshall, Virginia 22115

I certify that
this is a true copy;

Attest *Cecil Eskridge*
Chief Clerk in Bankruptcy

EXHIBIT C, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ

SCHEDULE B

WINTHROP LAWRENCE CORPORATION

LIST OF CREDITORS

Wheaton Office Supply Co., Inc.
2405 Price Ave
Wheaton, Md. 20902

Jack Wolfe
833 Moraga Dr. Suite 9
Los Angeles, Calif. 90049

Douglas C. Wynn
364 May Building
Greenville, Mississippi 38701

Xerox Corp.
P. O. Box 1794
William Penn Annex
Philadelphia, Pennsylvania 19105

Arthur Young & Co.
6 Office Park Circle
Birmingham, Alabama 35200

Beckman Tower Hotel
3 Mitchell Place
New York, New York 10017

Michael Gleason
7315 Wisconsin Avenue
Bethesda, Maryland 20014

Marriott Motor Hotel
P. O. Box 4590
Philadelphia, Pennsylvania 19131

Louisiana Loan & Thrift Corp.

Revzen Office Equipment Co.
415 North La Salle Street
Chicago, Illinois 60610

H. M. Witt & Co.
53 West Jackson Boulevard
Chicago, Illinois 60604

H. L. Gordon
300 North Lee Street
Alexandria, Virginia 22314

The Tonsmeire Agency
216 St. Francis Street
Mobil Alabama 36601

Sal Gottuso
1405 - 30th Street
Washington, D. C. 20007

I certify that
this is a true copy:

Attest *Abel C. C. C.*
Chief Clerk in Bankruptcy

EXHIBIT C, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ

SCHEDULE B

WINTHROP LAWRENCE CORPORATION

LIST OF CREDITORS

Albert J. Shahan
300 E. 9th St.
Los Angeles, Calif. 90000

The Shauham Hotel
2500 Calvert Street N. W.
Washington, D. C. 20015

Sontheimer & Co., Inc.
4 West 58th Street
New York, New York 10019

Stouffer's Indianapolis Inn
2820 North Meridian
Indianapolis, Indiana 46200

Sullivan's Flowers
5011 Wisconsin Avenue N. W.
Washington, D. C. 20015

Telephone Answering Service
898 National Press Building
Washington, D. C. 20005

Title Insurance & Trust Co.
433 South Spring Street
Los Angeles, California 90000

Total, Inc.
9610 Lee Highway
Fairfield, Virginia 22030

Transogram
200 Fifth Avenue
New York, New York 10010

Jack Understein
15th and K Streets N. W.
Washington, D. C. 20005

United Air Lines
P. O. Box 66100
Chicago, Illinois 60666

Verpet Engineering Co.
6824 Melrose Avenue
Los Angeles, California 90000

Vertuse & Scheck
1617 Westcliff Drive
Newport Beach, California 92660

Vistagram
31 East 28th Street
New York, New York 10016

The Waldorf Astoria
301 Park Avenue
New York, New York 10022

Washington Suburban Sanitary Commission
4017 Hamilton Street
Hyattsville, Maryland 20743

I certify that

this is a true copy;

Attest *Edith Esteridge*
Chief Clerk in Bankruptcy

EXHIBIT C, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ

SCHEDULE B

WINTHROP LAWRENCE CORPORATION

LIST OF CREDITORS

Citizens & Southern National Bank

Vendors of Idle Plant
Sturgis
Michigan 49091

Bosic Cascade Papers
1600 S. W. 4th Avenue
Portland, Oregon 97201

Mattel, Inc.

First National Bank of Eastern North Carolina
216 S. Broad St.
Edenton, N. Carolina 27932

Thomas J. Barnette
3060 Pharr Court North
Atlanta, Georgia 30300

Julian Lecraw
c/o Massey Junior College, Inc.
Fulton Bank Building
Atlanta, Georgia 30300

Columbia Financial Corp.
5454 Wisconsin Avenue
Washington, D. C. 20015

Super Stores, Inc.
1310 Telegraph Road
Prichard, Alabama 36610

Creditors Committee of Jerry Wollman

I certify that
this is a true copy:

Attest *Edna E. Evers*
Chief Clerk in Bankruptcy

EXHIBIT C, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ

SCHEDULE B

WINTHROP LAWRENCE CORPORATION

LIST OF CREDITORS

Montgomery Ward Rent A Car
437 Lytton Avenue
Palo Alto, California 94301

National Industrial Service Corp.
275 Madison Avenue
New York, New York 10016

Richard T. OpiE *c/o NATIONAL EDUCATION FUND, INC*
490 Valley Street
Manchester, New Hampshire 03103

Don Peters
18420 S. Santa Fe Ave.
Long Beach, Calif 20801

Philco-Ford Corp.
4700 Wissahickon Avenue
Philadelphia, Pennsylvania 19144

E. A. Piterak
~~490 Valley Street~~ *524 GREELEY ST*
Manchester, New Hampshire 03103

Pitney-Bowes, Inc.
Walnut and Pacific Streets
Stamford, Connecticut 06904

Potomac Temporaries, Inc.
2440 Wilson Boulevard
Arlington, Virginia 22201

Pryor, Brown, Cashman & Sherman
437 Madison Avenue
New York, New York 10022

Publishers Collection Service
2001 Elm Hill Pike
Nashville, Tennessee 37200

Radio Phone Communications, Inc.
529 - 14th Street N. W.
Washington, D. C. 20005

The Regency Hotel
Park Avenue and 61st Street
New York City, New York 10021

Feodora R. Reid
4613 Coldbrook Avenue
Lakewood, California 90713

Bernard J. Shaw & Associates
34 Pine Street
Morristown, New Jersey 07960

I certify that
this is a true copy:

Attest *Richard E. Skendzel*
Chief Clerk in Bankruptcy

EXHIBIT C, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ

SCHEDULE B

WINTHROP LAWRENCE CORPORATION

LIST OF CREDITORS

American Carrier Corp.
P. O. Box 14010
Church Street Station 10007
New York, New York

A & E Blueprinters, Inc.
2009 K Street N. W.
Washington, D. C. 20015

Admaster Sales Corp.
425 Park Avenue South
New York, New York 10016

Aero Special Air Freight
1216 Rolling Road
Burlingame, California 94010

Afghan Carpet Cleaners
927 - 15th Street N. W.
Washington, D. C. 20005

Annex Phone Service, Inc.
25 East Washington Street
Chicago, Illinois 60602

Atlantic Aviation Corp.
P. O. Box 1709
Wilmington Apt.
Wilmington, Delaware 19899

Avis
P. O. Box 201
Garden City, New York 11530

F. F. Babo
40 Gertrude Lane
Novato, Calif. 94947

Bank of Moorhead
Moorhead
Mississippi 38761

Beckman Travel Service
866 United Nations Plaza
New York, New York 10017

Becker & Liptz
1819 H Street N. W.
Washington, D. C. 20006

Bethesda Office Machines
4914 Bethesda Avenue
Bethesda, Maryland 20014

Max Block, Jr.
866 United Nations Plaza
New York, New York 10017

I certify that
this is a true copy:

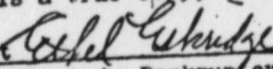
Attest 
Chief Clerk in Bankruptcy

EXHIBIT C, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ
LIST OF CREDITORS

C & F Tile Co. of Maryland
P. O. Box 657
Baltimore, Maryland 21203

Camalier & Buckley
1141 Connecticut Avenue
Washington, D. C. 20036

Caplin & Dreysdale
1101 Seventeenth Street N. W.
Washington, D. C. 20036

Charter Corporate Service, Inc.
1435 Morris Avenue
Union, New Jersey 07083

Clark & Davis & Bilk
200 - 2nd Street
Indianola, Mississippi 38751

Coffee Service Corp.
P. O. Box 1133
Bailey's Cross Road, Virginia 22041

Continental Assurance Co.
P. O. Box 808
Chicago, Illinois 60690

The Corporation Trust Co.
277 Park Avenue
New York, New York 10017

Crown Life Insurance Co.
550 South Vermont
Los Angeles, California 90005

Chevy Chase Travel
4715 Cordell Avenue
Bethesda, Maryland 20014

Dean Van Lines, Inc.
P. O. Box 923
Long Beach, California 90801

Denning & Wahlstetter
1 Farrant Square South
Washington, D. C. 20015

The Drake
440 Park Avenue
New York, New York 10022

Dun & Bradstreet, Inc.
Box 5574
Washington, D. C. 20016

Dupack & Turnquest
Box 1451
Bahamas

Eurocard
350 Lexington Avenue
New York, New York 10016

I certify that
this is a true copy;

Attest

Edith E. Kridger
Book Clerk in Bankruptcy

EXHIBIT C, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ

SCHEDULE B

WINTHROP LAWRENCE CORPORATION

LIST OF CREDITORS

European De Luxe Tours
1202 Geneva
Switzerland
(Parc de Bud 1)

Finnegans
5454 Wisconsin Avenue
Chevy Chase, Maryland 200

Governor's House
8400 Wisconsin Avenue
Bethesda, Maryland 20015

Graphic Sciences, Inc.
Corporate Drive
Commerce Park
Danbury, Connecticut 06810

Greenebaum, Grason
614 Kentucky Home Life Building
Louisville, Kentucky 40200

The Hertz Corp.
P. O. Box 2856 Grand Central Station
New York, New York 10017

Hindin, McKittrick & Marsh
8920 Wilshire Boulevard
Beverly Hills, California 90211

Jenner & Block
135 South La Salle Street
Chicago, Illinois 60600

Jet American, Inc.
1250 Connecticut Avenue N. W.
Washington, D. C. 20015

The Madison
15th and M Streets N. W.
Washington, D. C. 20005

Merkle Press, Inc.
810 Rhode Island Avenue N. E.
Washington, D. C. 20018

Michaels Limousine Service
84-40 - 153rd Avenue
Howard Beach, New York 11414

Missemessenger, Inc.
1209 King Street
Wilmington, Delaware 19801

Morgan Courier
P. O. Box 29
Kensington, Maryland 20795

I certify that
this is a true copy:

Attest *[Signature]*
Chief Clerk in Bankruptcy

EXHIBIT C, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ

SCHEDULE B

WINTHROP LAWRENCE CORPORATION

LIST OF CREDITORS

Missouri State Bank & Trust Co.
300 North Twelfth Boulevard
St. Louis, Missouri 63101

Noth Denver Bank
P. O. Box 11038
Denver, Colorado 80211

Union National Bank of Springfield
S. S. Station Box 1157
Springfield, Missouri 65805

University National Bank
1354 East 55th Street
Chicago, Illinois 60615

State Bank of Clearing
5235 West 63rd Street
Chicago, Illinois 60638

Union Bank of Switzerland
45 Bahnhofstrasse
8001 Zurich, Switzerland

Mag Mill Co., Inc.
100 Indiana Ave., N.W.
Washington, D. C. 20005

Barry Mahon
Dania
Florida 33004

South Main Bank
Houston
Texas 77000

First National Bank of Lafayette
Lafayette
Louisiana 70501

Lamont du Pont Copeland, Sr.
Du Pont Building
Wilmington, Delaware 19800

First National Bank of Ocean Springs
Ocean Springs
Mississippi 39564

International Barbers Union
4755 Kingway Drive
Indianapolis, Indiana 46205

Stein, Weinberg & Winderman
215 South Broad Street
Philadelphia, Pennsylvania 19100

I certify that
this is a true copy:

Attest *Edith G. Kutz*
Chief Clerk in Bankruptcy

EXHIBIT C, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ

SCHEDULE B

WINTHROP LAWRENCE CORPORATION

LIST OF CREDITORS

Continental Fidelity Corp.
5417 Griggs Road
Houston, Texas 77000

Crown Financial Corp.
9300 Ashton Road
Philadelphia, Pennsylvania 19136

Franklin National Bank
199 Second Street
Mineola, New York 11501

Madison National Bank.
1730 M Street N. W.
Washington, D. C. 20036

National Republic Bank
South Loomis Street
Chicago, Illinois 60608

Peoples Bank and Trust Co.
Aurora
Colorado 80010

Royal National Bank
1212 Avenue of the Americas
New York, New York 10036

Estate of Charles Raizan and
Emroy Investors, Ltd.
c/o Charles Korn, Esquire
530 Fifth Avenue
New York, New York 10016

Banco Credito y Ahorro Ponceño
Puerto Nuevo
Puerto Rico 00922

Distrifilm S. A.
London
England

First National Bank of Carrolltown
Sharrodsville
Ohio 44675

Hancock Bank
Gulfport
Mississippi 39501

Houston Bank and Trust Co.
P. O. Box 2555
Houston, Texas 77001

Huntington Bank of Columbus
17 South High Street
Columbus, Ohio 43216

I certify that
this is a true copy:
Attest *Edith Eschridge*
Chief Clerk in Bankruptcy

EXHIBIT D, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ.

CERTIFICATION OF JUDGMENT

CIV 191 (4-67)

United States District Court

FOR THE

Southern District of New York

CIVIL ACTION FILE NO.

70 Civ. 3884

CROWN FINANCIAL CORPORATION

vs.

WINTHROP LAWRENCE CORPORATION &
LAMOT DU PONT COPELAND, JR.JUDGMENT
71,104CERTIFICATION OF JUDGMENT FOR
REGISTRATION IN ANOTHER DISTRICT

I, John Livingston, Clerk of the United States District Court for
the Southern District of New York,
do hereby certify the annexed to be a true and correct copy of the original judgment entered in the
above entitled action on Nov. 25, 1970, as it appears of record in my office,
and that

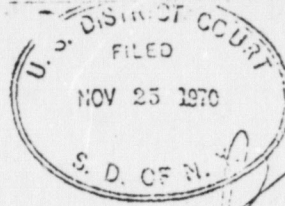
- * No Notice of Appeal from the said judgment has been filed in
my office & the time for appeal commenced to run on 11-30-70.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said
Court this 11th day of January, 1971.

John Livingston, Clerk
By Francis J. Sullivan Deputy Clerk

* When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on [insert date] upon the entry of [If no motion of the character described in Rule 73(a) F.R.C.P. was filed, here insert 'the judgment', otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.] If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on [insert date] and the judgment was affirmed by mandate of the Court of Appeals issued [insert date]" or "a notice of appeal from the said judgment was filed in my office on [insert date] and the appeal was dismissed by the [insert 'Court of Appeals' or 'District Court'] on [insert date]", as the case may be."

EXHIBIT D, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CROWN FINANCIAL CORPORATION,

Plaintiff,

-against-

WINTHROP LAWRENCE CORPORATION &
~~LAMONT DU PONT COPELAND, JR.~~

Defendants.

70 Civil 3864

JUDGMENT

\$ 71,104

An inquest having been brought on before the Honorable Charles M. Metzner, United States District Judge, on November 24, 1970, and at the conclusion the Court having reserved decision, and the Court thereafter on November 24, 1970, having handed down its opinion constituting its findings of fact and conclusions of law in favor of the plaintiff and directing the Clerk to enter judgment, it is,

ORDERED, ADJUDGED AND DECREED That the plaintiff, CROWN FINANCIAL CORPORATION, have judgment against the defendants, WINTHROP LAWRENCE CORPORATION & ~~LAMONT DU PONT COPELAND, JR.~~, in the amount of \$297,116.54

November 25, 1970

John Livingston
Clerk

Judgment entered inadvertently as to both defts.
Case still open as to deft. Lamont Du Pont Copeland, Jr.

Maria Arinoldo
Deputy Clerk

MICROFILM

JAN 7 - 1971

MEMO, ENDORSED

January 27, 1971. The judgment as awarded by the Court is correct. The inquest was on the summary judgment granted against the corporation only. So ordered.
Charles M. Metzner
U.S.D.J. CS

(AN EXTRA OF THE MINUTES)

M. Arinoldo

EXHIBIT E, ANNEXED TO AFFIRMATION OF ROY E. POMERANTZ.

Recording Requested by:

George E. McGill, Esquire
3605 Long Beach Boulevard, Suite 412
Long Beach California 90807

Mail Tax Statements to:

DIVERSIFIED GENERAL, INC.
Suite 904, Del Webb Center,
Fresno, California 93721

Affix I.R.S.....above

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Donald McPhail, Receiver for Winthrop Lawrence Corp., whose office is at 5707 Enderly Road, Baltimore, Maryland 21212 hereby grants to DIVERSIFIED GENERAL, INC., a California corporation all of the right, title and interest of Winthrop Lawrence Corp. and said Receiver as grantor, without any warranty whatsoever, the following real property in the County of Madera, State of California:

All those portions of Section 28 T.10 S., R.21 E., M.D. B. & M., County of Madera, State of California, described as follows:
The South 1/2 of the Northwest 1/4 of the of the Northeast 1/4: the Southwest 1/4 of the Northeast 1/4 and the Northwest 1/4 of the Southeast 1/4.
Containing 100 acres a little more or less.

WINTHROP LAWRENCE CORP.

Dated June 21, 1974

By Donald McPhail, Receiver
Donald McPhail, Receiver

STATE OF MARYLAND)
CITY OF BALTIMORE) ss.

On June 24, 1974 before me, the undersigned, a Notary Public in and for said State, personally appeared Donald McPhail, Receiver for Winthrop Lawrence Corp., known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed same.

WITNESS my hand and official seal.



Lynette K. Austin
Notary Public

AFFIDAVIT OF STUART R. WOLK IN OPPOSITION TO MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CROWN FINANCIAL CORPORATION,

Plaintiff,

-against-

WINTHROP LAWRENCE CORPORATION and
LAMMOT DUPONT COPPLAND, JR.

Defendants,

and

DIVERSIFIED GENERAL, INC.

Intervenor.

AFFIDAVIT IN OPPOSITION
TO INTERVENOR'S FRCP MOTION
UNDER RULE 60(b)

70 Civ 3884
C.M.M.

State of New York)

ss:

County of New York)

Stuart R. Wolk, being duly sworn, states, avers and swears that:

1. He is the attorney of record in the matter of Crown Financial Corporation -vs- Winthrop Lawrence Corporation, 70 Civ 3884 and is totally and completely familiar with the facts and circumstances surrounding all proceedings from the inception of the named action.

2. On or about the 13th day of October 1970, a Notice of Motion was filed before this court seeking Summary Judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure against Winthrop Lawrence Corporation and Lammot DuPont Copeland, Jr.

3. Said motion was delayed and not heard until the following week at which time this Honorable Court was notified that Lammot DuPont Copeland, Jr. had filed pursuant to the Bankruptcy Laws of the United States under Chapter XI thereof and that the United States District Court for the District of Delaware had issued a Restraining Order against any further proceedings against Lammot DuPont Copeland, Jr.

4. Upon being so notified, the Hon. Sylvester J. Ryan, United

AFFIDAVIT OF STUART R. WOLK IN OPPOSITION TO MOTION

States District Judge, did enter an Order Staying further proceedings against Lamont DuPont Copeland, Jr. but proceeded to enter a Default Order against Winthrop Lawrence Corporation based upon our aforesated Motion under Rule 56(a) of the Federal Rules of Civil Procedure, setting down the Default for an Inquest to determine the exact amount of the Judgment to be entered against the defendant corporation.

5. Thereinafter the plaintiff herein waited for notification of Inquest and on the 9th day of November 1970 upon notice to all parties, a Motion pursuant to Rule 10 of the Federal Rules of Civil Procedure was made before the Hon. Chief Judge Sidney Sugarman for a Preference in holding the Inquest against the Winthrop Lawrence Corporation only.

6. Thereafter upon notice to all parties an Inquest against Winthrop Lawrence Corporation only was duly held on the 24th day of November 1970 before the Hon. Charles M. Metzner, United States District Judge which Inquest arrived at the amount of \$297,116.54.

7. On or about the 11th day of November 1970 Paul S. Aufrichtig, the attorney of record of Winthrop Lawrence Corporation, who had appeared on behalf of said defendant, wrote a letter to the Hon. Sidney Sugarman, Chief Judge, United States District Court for the Southern District of New York, a copy of which is attached hereto as Exhibit A. A copy was received by the undersigned affiant on the 13th day of November 1970. The letter purported to notify the Court that the New York Times had reported that the defendant Winthrop Lawrence Corporation had just filed a Petition in Bankruptcy.

8. Upon receipt of said communication, the affiant herein, wrote a letter to the Hon. Sidney Sugarman, a copy of which is attached hereto as Exhibit B. With knowledge of this correspondence, the Chief Judge of the District nevertheless saw fit to proceed with a Notice of Motion for a Preference to set up an Inquest in the subject case. At no time prior to the Inquest

AFFIDAVIT OF STUART R. WOLK IN OPPOSITION TO MOTION

was the undersigned officially notified of the existence of any Restraining Order and/or Bankruptcy Proceeding other than the notice received as set forth above in Exhibit A.

9. On the 8th day of December 1970 the affiant herein, concerned over a lack of notification of the official existence of any Bankruptcy let alone Restraining Order, did write to the Referee in Bankruptcy of the United States District Court of the District of Maryland, a copy of which is enclosed and attached as Exhibit C.

10. Sometime thereafter, we were notified of the existence of the Bankruptcy of Winthrop Lawrence Corporation before the United States District Court for the District of Maryland.

11. On the 7th day of January 1971 a proof of claim in the amount of \$297,116.54 was filed before the United States District Court for the District of Maryland.

12. On the 29th day of January 1971 at the request of the United States District Court for the District of Maryland questioning the basis of our client's claim, the Judgment Creditor - Plaintiff herein, did file an Amended Proof of Claim with the Hon. Joseph O. Kaiser, Referee in Bankruptcy, setting forth a copy of the Judgment of the Hon. Charles M. Metzner, and a Certification of Judgment for Registration, attached hereto and made a part hereof as Exhibit D.

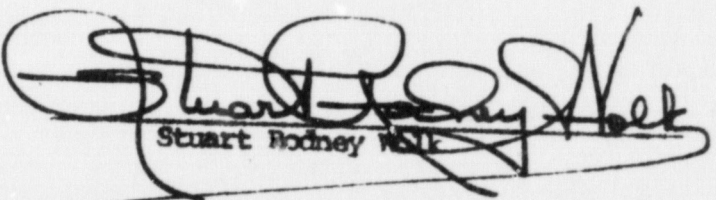
13. In spite of the appearance of Crown before the Bankruptcy Court in Maryland, for a period of well over 4 years and the notification to that Court of the existence of the Judgment against Winthrop Lawrence Corporation, no action, proceeding or questioning has been raised by the Trustee in Bankruptcy; the Referee in Bankruptcy; the debtor corporation; its officers and/or directors concerning the Judgment against said corporation and/or the date when said Judgment was entered.

AFFIDAVIT OF STUART R. WOLK IN OPPOSITION TO MOTION

14. As supported by the applicable law and decisional cases set forth in the Brief in Support of this Affidavit, Diversified General herein has no stand whatsoever to collaterally attack the validity of a judgment entered in legal proceedings before this Court.

WHEREFORE, the judgment creditor herein requests dismissal of the Motion of Diversified and such other appropriate relief to the Judgment Creditor as the court may deem necessary and proper.

Dated: New York, New York
16 May 1975


Stuart Rodney Wolk

Sworn to before me this 16th
day of May 1975.

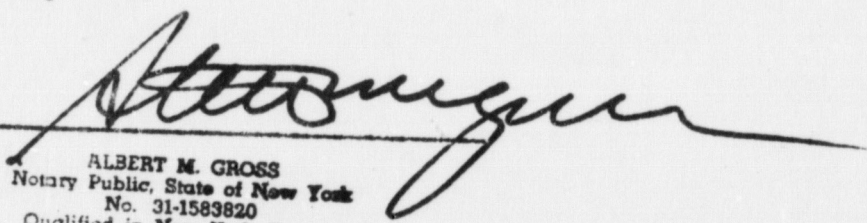

ALBERT M. GROSS
Notary Public, State of New York
No. 31-1583820
Qualified in New York County
Commission Expires March 30, 1977

EXHIBIT A, ATTACHED TO AFFIDAVIT OF STUART R. WOLK. PLAZA 2-7060
PAUL S. AUFRICHTIG
COUNSELOR AT LAW

*866 United Nations Plaza
New York, N.Y. 10017*

NOV 13 1970

November 11, 1970

Honorable Sidney Sugarman
Chief Judge
Room 2001
United States Courthouse
Foley Square
New York, New York

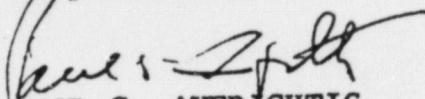
Re: Crown Financial Corporation v. Winthrop Lawrence
Corporation, et al 70 Civ 3884

Sir:

I am in receipt of a Notice of Motion for an Inquest Preference
by plaintiff.

Since my appearance in Court before Judge Ryan, I have not
had any communication from my client but read in yesterday's
New York Times that Winthrop Lawrence Corporation had filed
a petition under Chapter XI of the Bankruptcy Law. I feel
obligated to bring the foregoing to the Court's attention.

Respectfully,


PAUL S. AUFRICHTIG

PSA:lm

cc: Joy and Wolk, Esqs.
60 East 42d Street
New York, New York

EXHIBIT B, ANNEXED TO AFFIDAVIT OF STUART R. WOLK.

November 13, 1970

Honorable Sidney Sugarman
Chief Judge
U. S. Courthouse, Room 2001
Foley Square
New York, New York

re: Crown Financial Corporation v. Winthrop
Lawrence Corporation, et ano 70 Civ 3884

Dear Judge Sugarman:

We have in hand Mr. Aufrichtig's letter of November 11, 1970 which was only received in the mail by us today. I am surprised that Mr. Aufrichtig was not aware of the conflict between the New York Times article and The Wall Street Journal article both of which appeared the same day. According to The Wall Street Journal article the Chapter 11 petition by Winthrop Lawrence is in the hands of the Court but has not been entered and is awaiting concurrence of a 37% stock holder and director of Winthrop Lawrence. I suggest that you order Mr. Aufrichtig to contact his client and to be in a position to make a representation to the Court as to the true state of facts. In the meanwhile we respectfully submit that our inquest is in order. As reported in the Wall Street Journal the chairman of Winthrop Lawrence entered a bankruptcy petition in Wilmington, Delaware 121 days after the family bank, Wilmington Trust Company, had taken judgment against him for over \$3,000,000.00. The Wall Street Journal interpreted this action as having been a ploy to segregate the personal assets of the chairman of Winthrop Lawrence from his creditors. We hope that such a ploy is not being done by the submission in the Maryland Court. Finally we submit that counsel should have acted in writing to you based on a communication from his client and not on a newspaper article. This course of action is compounded by the existence of contemporaneous conflicting stories in newspapers of equal prestige.

We understand that a personal tragedy has befallen probably the most eminent family in America but we do submit that this does not give them privileges over and above other debtors and persons before this Court.

35a

EXHIBIT B, ANNEXED TO AFFIDAVIT OF STUART R. WOLK

Our position is that until a bankruptcy petition is entered restraining us our client is entitled to a judgment.

Respectfully submitted,

Stuart R. Wolk

SRW:hc

James V. Joy, Jr.
Stuart R. Wolk
Robert M. Reagan
Lucille J. Becker
Edward V. Egert

JOY and WOLK
ATTORNEYS AT LAW
Lincoln Building
60 East 42nd Street
New York, N.Y. 10017
Telephone: (212) OXf... 7 4080

Albert M. Gross
Everett F. Kahn
Counsel

8 December 1970

Referee in Bankruptcy
United States District Court
District of Maryland
United States Post Office and Court House
Baltimore, Maryland

Re:- Alleged petition of WINTHROP LAWRENCE CORP.
pursuant to Chapter XI of the Bankruptcy Act.

Sir:

Please be advised that it has been brought to our attention through the New York Times and the Wall Street Journal that WINTHROP LAWRENCE CORPORATION, has filed pursuant to Chapter XI of the Bankruptcy Act and that some time back proceedings were in fact instituted thereunder. Further it has been brought to our attention that the law firm of SULLIVAN, WIESAND AND SINGER and in particular JAN K. GUBEN Esq. of said firm are representing the debtor in possession.

We are therefore and as a direct result of these facts, registering a formal complaint with this Court and with the Chief Judge of this District insofar as the following appears to be true:

- (a) No notice has ever been given to known creditors of the debtor in possession of the filing of this proceeding;
- (b) The alleged order of the referee staying any proceeding or the enforcement thereof is a fraud on the creditors in that it attempts to make of record of a certain date an order that has not been forwarded to the attention of any of the creditors;
- (c) The attorneys named as the attorneys of record for the debtor in possession especially Jan K. Guben are and have been the attorneys of record representing the CROWN CORK AND SEAL COMPANY THE parent of the WHOLLY OWNED subsidiary CROWN FINANCIAL CORPORATION, a judgment CREDITOR of the debtor in possession;
- (d) There is an obligation both in terms of protecting the assets of the debtor and in terms of protecting the rights of all creditors to notify them as soon after the filing as possible to allow them to enter into the proceedings as is required under the Act. We feel that 30 days have elapsed and the only information we have received has been through chance and the newspapers indicating a proceeding that is


EXHIBIT C, ANNEXED TO AFFIDAVIT OF STUART R. WOLK

Page 2

8 December 1970

highly questionable to say the least has been entertained.

Pending further verification of the issues that we have presented herein, we shall treat the actions of the alleged proceeding as a nullity and if stayed shall endeavor to take whatever steps are necessary to set the proceedings aside as being fraudulent and contrary to the interests of the creditors of the debtor in possession.

A handwritten signature in dark ink, appearing to read "E. DRYKalek", is written over a horizontal line. The signature is stylized with a large, looped initial "E".

cc: F.L. Bailey
Attorney for T. Shaheen

EXHIBIT D1, ANNEXED TO AFFIDAVIT OF STUART R. WOLK.

James V. Joy, Jr.
Stuart R. Wolk
Robert M. Reagan
Lucille J. Becker
Edward V. Egert

JOY and WOLK
ATTORNEYS AT LAW
Lincoln Building
60 East 42nd Street
New York, N.Y. 10017
Telephone: (212) OXford 7-4080

Albert M. Gross
Everett F. Kahn
—
Counsel

January 29, 1971

Hon. Joseph O. Kaiser
Referee in Bankruptcy
343 Post Office Building
Baltimore, Maryland 21202

re: Debtor No. 14360--Petition of Winthrop
Lawrence Corporation pursuant to
Chapter XI of the Bankruptcy Act

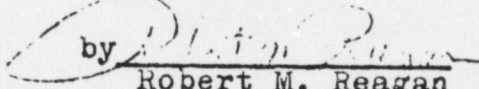
Honorable Sir:

You will please find enclosed herewith a xerox copy of the amended proof of claim of our client Crown Financial Corporation against the above named petitioner. We are also enclosing a copy of the Judgment on file in the New York Southern District Court, with the Clerk's certificate that no appeal has been filed therefrom attached.

We trust this correctly and properly perfects the claim of Crown Financial Corporation in the amount of \$297,116.54 against the above named Bankrupt.

Sincerely

Joy & Wolk

by 
Robert M. Reagan

rmr:s

three enclosures

1. Amended proof of claim
2. Judgment
3. Certificate no appeal from judgment filed

EXHIBIT D2, ANNEXED TO AFFIDAVIT OF STUART R. WOLK.

BK-28a (Rev. Nov. 1966)

United States District Court

FOR THE

In the matter of

WINTHROP LAWRENCE CORPORATION

In Bankruptcy

No. 70-94

(Important—Insert name of bankrupt or debtor above)

AMENDED PROOF OF CLAIM IN BANKRUPTCY
 Richard Kryzanowski 9300 Ashton Road

(Name of Person Signing Below)
 in Philadelphia, County of Philadelphia, State of Pennsylvania, Zip Code 19136, says:

1. (a) IF CLAIMANT IS AN INDIVIDUAL, check here. That he is the claimant herein.
 (b) IF CLAIMANT IS A PARTNERSHIP, check here. and complete section (b).
 That he is a member of

(Partnership Name)
 of the undersigned, and
 of, State of, and carrying on
 business at No. Street, in
 State of

- (c) IF CLAIMANT IS A CORPORATION, check here. X and complete section (c).
 That the undersigned is the Secretary of Crown Financial Corporation
 a corporation organized under the laws of the State of Pennsylvania, and
 carrying on business at No. 9300 Ashton Rd Street, in Philadelphia
 State of Pennsylvania, and is duly authorized to make this proof of claim on
 its behalf.

- (d) IF MADE BY AGENT OR ATTORNEY, check here. and complete section (d).
 That the undersigned is the agent or attorney of

of No. Street, in
 State of; that he is duly authorized by the creditor named
 above to make this proof of claim in his behalf; that said proof cannot be made by
 the above-named creditor in person because

2. That the above-named bankrupt (or debtor) was, at the time of the filing of the petition herein, and still is, justly and truly indebted (or liable) to the claimant in the sum of \$297,116.54 dollars.
 3. That the undersigned, as agent or attorney of the debtor, the debtor defaulted thereon; a judgment subsequently being entered by the US District Court for the Southern District of New York.
 4. That no part of the debt (or liability) has been paid except
 None
 5. That there are no set-offs or counterclaims to the debt (or liability) except
 None
 6. That claimant does not hold, and has not had or received, any security for the debt (or liability), nor has any person by the claimant's order or knowledge or belief had or received any security for the debt (or liability) for the claimant, except for a judgment lawfully entered in the Office of the USDC for SDNY pursuant to order of USDC Charles E. Tynner in the amount of \$297,116.54 against Carmot Copeland, Jr. (verox)
 7. [If the debt or liability is founded upon an instrument of writing.] That the instrument upon which the debt (or liability) is founded is attached hereto (or lost or destroyed, as set forth in the affidavit attached hereto).
 8. [If the debt is founded upon an open account.] That the said debt was (or will become) due on or that the average date thereof is; that no note, or other negotiable instrument, has been received for such amount or any part thereof (or that the said debt is evidenced by a note, or other negotiable instrument, which is attached hereto); and that no judgment has been rendered thereon, except

9. This claim is filed as an (UNSECURED) CLAIM.
 (PRIORITY)

\$297,116.54

Total Amount Claimed

X Dated at Philadelphia, this 7th day of January, 1977
 Signed Secretary

NOTE: Failure to complete all necessary parts of this form may result in disallowance.
 PENALTY FOR PRESENTING FRAUDULENT CLAIM—Fine of not more than \$5,000 or imprisonment for not more than five years or both—Title 18, U.S.C., Sec. 162.
 (When Signed Mail this Proof of Claim to Referee in Bankruptcy)

ONLY COPY AVAILABLE

EXHIBIT D3, ATTACHED TO AFFIDAVIT OF STUART R. WOLK--
JUDGMENT, DATED NOVEMBER 25, 1970.

(Reproduced, *supra*, at page 27a.)

EXHIBIT D4, ATTACHED TO AFFIDAVIT OF STUART R. WOLK--
CERTIFICATION OF JUDGMENT FOR REGULATION
IN ANOTHER DISTRICT.

(Reproduced, *supra*, at page 26a.)

ORDER BY METZNER, D. J. DENYING MOTION TO INTERVENE AND
TO VACATE AS VOID JUDGMENT ENTERED IN FAVOR OF
PLAINTIFF AGAINST WINTHROP LAWRENCE CORPORATION,
APPEALED FROM.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

METZNER, D. J.:

This is a motion for leave to intervene in the
action pursuant to Fed. R. Civ. P. 24(a)(2), and if
such leave is granted, to vacate as void the judgment
entered in favor of the plaintiff against Winthrop
Lawrence Corporation.

The proposed intervenor purchased property in
Madera County, California, in June of 1974. There was
a lien against the property in the form of a judgment
filed with the County Clerk of that county, which judg-
ment had been obtained in this court on November 25,
1970 against Winthrop Lawrence Corporation.

The affairs of Winthrop Lawrence Corporation are
somewhat muddled, to say the least, but it appears that
on November 10, 1970, it filed a petition for reorgani-
zation pursuant to Chapter XI of the Bankruptcy Act.
It now appears to be in bankruptcy.

ORDER BY METZNER, D. J. DENYING MOTION TO INTERVENE AND
TO VACATE AS VOID JUDGMENT ENTERED IN FAVOR OF
PLAINTIFF AGAINST WINTHROP LAWRENCE CORPORATION,
APPEALED FROM.

The judgment entered by this court may be void because of the stay order entered by the referee in bankruptcy on November 12, 1970. This order had not been brought to the attention of this court. Whether the attorney for the plaintiff knew or should have known of that order is a question upon which this court does not indicate any resolution.

Under the circumstances, this matter should be properly prosecuted by the receiver of Winthrop Lawrence Corporation. Four years elapsed between the entry of the judgment, its filing in California, and the purchase of the property by the proposed intervenor. Everyone knew of the existence of this judgment during that time. The facts are peculiarly within the knowledge of the bankruptcy court in Maryland.

Motion denied. So ordered.

DATED: New York, N. Y.
July 30, 1975

CHARLES M. METZNER
U. S. D. J.

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x

CROWN FINANCIAL CORPORATION,

Plaintiff,

- against -

WINTHROP LAWRENCE CORPORATION and
LAMMOT DU PONT COPELAND, JR.,

Defendants,

and DIVERSIFIED GENERAL, INC.,

Intervenor
-----x

Civil Action No.
70 Civ. 3884

CMM

Notice of Appeal

S I R S:

PLEASE TAKE NOTICE that DIVERSIFIED GENERAL, INC., the proposed intervenor herein, hereby appeals to the United States Court of Appeals for the Second Circuit from the order dated July 30, 1975, denying its motion for leave to intervene and to vacate as void the judgment entered in favor of the plaintiff against WINTHROP LAWRENCE CORPORATION on the grounds that this matter should be properly prosecuted by the receiver of WINTHROP LAWRENCE CORPORATION, and the proposed intervenor appeals from said judgment and each and every part thereof.

Dated: New York, New York
August 27, 1975

NOTICE OF APPEAL

Yours, etc.

S/

ROY E. POMERANTZ a member of
the firm
KROLL, EDELMAN, ELSER & WILSON
Attorneys for Intervenor
DIVERSIFIED GENERAL, INC.
Office and P. O. Address
22 East 40th Street
New York, New York 10016

To: STUART RODNEY WOLK
Attorneys for Plaintiff
CROWN FINANCIAL CORPORATION
420 Lexington Avenue
New York, New York 10017

WEIL, GOTSHAL & MANGES
Attorneys for Defendant
LAMMOT DU PONT COPELAND, JR.
767 Fifth Avenue
New York, New York 10022

PAUL S. AUFRICHTIG
Attorney for Defendant
WINTHROP LAWRENCE CORPORATION
866 United Nations Plaza
New York, New York 10017

CLERK OF THE COURT
United States District Court
for the Southern District
Southern District of New York
Foley Square
New York, New York

NOTICE OF APPEAL

STATE OF NEW YORK)
)
 COUNTY OF NEW YORK) ss.:

BARBARA O'CONNELL, being duly sworn, deposes and says,
 that deponent is not a party to the action, is over 18 years of
 age and resides in Yonkers, New York.

That on the 28th day of August, 1975, deponent served
 the within Notice of Appeal upon:

PAUL S. AUFRICHTIG
 Attorney for Defendant
 WINTHROP LAWRENCE CORPORATION
 866 United Nations Plaza
 New York, New York 10017

WEILL, GOTSHAL & MANGES
 Attorneys for Defendant
 LAMMOT DU PONT COPELAND, JR.
 767 Fifth Avenue
 New York, New York 10022

STUART RODNEY WOLK
 Attorneys for Plaintiff
 CROWN FINANCIAL CORPORATION
 225 West 34th Street
 New York, New York 10001

in this action, at the address(es) designated by said attorney(s)
 for that purpose by depositing same enclosed in a postpaid,
 properly addressed wrapper, in an official depository under the
 exclusive care and custody of the United States Post Office within
 the State of New York.

Sworn to before me this

28th day of August, 1975.

Marshall S. Endick

MARSHALL S. ENDICK
 Notary Public, State of New York
 No. 41-1114750 Qual. In Queens Co.
 Commission Expires March 30, 1977

Barbara O'Connell

BARABARA O'CONNELL

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
MOTION OF INTERVENOR.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CROWN FINANCIAL CORPORATION

Plaintiff,

-vs-

WINTHROP LAWRENCE CORPORATION and

LAMMOT DU PONT COPELAND, JR.,

Defendants,

and DIVERSIFIED GENERAL, INC.

Intervenor

Civil Action No.
70 Civ. 3884
CMM

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION
TO MOTION OF INTERVENOR DIVERSIFIED
GENERAL INC.'S MOTION TO INTERVENE
AND MOTION TO VACATE THE JUDGMENT
AGAINST DEFENDANT WINTHROP LAWRENCE CORPORATION

OF COUNSEL:

ARTHUR E. NEUMAN
200 Gelman Building
2120 L Street, N.W.
Washington, D.C. 20037

Law Offices
STUART R. WOLK
Attorney for Plaintiff
225 West 34th Street
New York, NY 10001

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
MOTION OF INTERVENOR

STATEMENT OF FACTS

For its Statement of Facts plaintiff adopts the facts and events stated by the Intervenor Diversified General, Inc. in its Memorandum of Law in support of the motion and the dockets and records of this case as filed before the Court, subject to the following further facts and events that are pertinent for a proper disposition of the matter:

Plaintiff contends that this Court acted properly in holding the hearing and inquest of November 24, 1970 after granting plaintiff's motion for summary judgment on October 28, 1970. The entry of a judgment on the Courts' docket on November 25, 1970, after said hearing and inquest, was appropriate under the facts and circumstances. The judgment is not void.

Plaintiff and its counsel acted in good faith in requesting the summary judgment, the inquest and hearing and in proceeding to judgment under the circumstances notwithstanding the November 12, 1970 Stay Order of the Baltimore Referee in Bankruptcy. Neither plaintiff nor its counsel received nor otherwise had any notice of the Stay Order action at all times herein material.

Although defendant Winthrop Lawrence Corporation was represented by counsel in the proceedings before this Court in 1970, such counsel made no effort to inform plaintiff or its counsel of the institution of the bankruptcy proceeding and the existence of the November 12, 1970 Stay Order. These same counsel, although entering their appearance as attorneys for defendant Winthrop Lawrence Corporation, presented no defense and allowed

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
MOTION OF INTERVENOR

the cause to proceed to its conclusion which included the hearing and inquest and entry of final judgment.

All parties in the proceedings before this Court, including Intervenor Diversified General, Inc., were parties to the Baltimore Bankruptcy proceedings and had or should have had full and complete knowledge of the judgment of this Court against Winthrop Lawrence Corporation since and by virtue of the January 7, 1971 Proof of Claim specifying said judgment filed in the said Bankruptcy Court by plaintiff. Notwithstanding such knowledge, neither the Debtor in Possession (Defendant Winthrop Lawrence Corporation herein), Creditors' Committee, Referee In Bankruptcy nor the Intervenor took any action to vacate the judgment or remove the lien subsequently filed in Madera County, California.

POINT I

PROCEDURE RULES CANNOT BE USED TO
EXTEND FEDERAL JURISDICTION OR VENUE

By filing this motion Intervenor seeks to extend the jurisdiction of the Court to a matter, the proper venue for which belongs in either the Courts of California (wherein the property lies and upon which the lien has been placed) or the U.S. District Bankruptcy Court in Baltimore, Maryland, the latter Court having jurisdiction over the property and the Debtor in Possession (the Defendant herein). It is a well settled principle that the use of Rule 24 Intervention cannot be used to extend federal jurisdiction or venue. See Lesnik v. Public Industrials Corporation, (1944, CA2 NY) 144 F2d 968.

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
MOTION OF INTERVENOR

Intervenor's interest is not in the judgment per se, but in what the plaintiff judgment creditor did with it after the proceedings were concluded, e.g. the lien action in California. This being the case Intervenor's interest is too remote for purposes of Rule 24.

POINT II

INTERVENOR'S INTEREST IS NOT "THE SUBJECT OF THE ACTION" SO AS TO BE CONSIDERED A PARTY HAVING AN INTEREST THEREIN AND ANY INTEREST IT MAY HAVE IN RELEASE OF THE LIEN IS A MATTER FOR THE COURTS OF CALIFORNIA

An intervenor in an action or proceeding is, as a practical matter, an original party. Re Raabe, Glissman & Co. (1947, D.C. NY) 71 Fed Supp. 678. By no stretch of the imagination can Diversified be considered as a legitimate party in the action in this Court. Diversified was not priv. to nor had it anything whatsoever to do with the transaction or contractual relationships between plaintiff Crown Financial Corporation and defendant Winthrop Lawrence Corporation and Lamot duPont Copeland, Jr. which would give it an interest in the prior proceedings before this Court. Any interest that it may have does not stem from the suit before this Court or whether or not a judgment was entered. Its interest is only in removal of the lien which interest can be adequately resolved in another more appropriate forum.

Disposition of the present action by this Court Southern District New York will not "as a practical matter impair or impede his ability to protect that interest, unless the appli-

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
MOTION OF INTERVENOR

cant's interest is adequately represented by existing parties."

There is no interest of Intervenor in the action that needs to be protected.

Intervenor's interest is not affected by the action taken in the Southern District New York. It only arises after the judgment is complete. Again, Intervenor's interest is not the subject of the action which this Court need be concerned about.

Intervenor's interest in the matter can be adequately adjudicated in California. The release of the lien is the real "re gestae" or gravamen of intervenor's interest. Furthermore the Maryland Bankruptcy Court acquired title to the California property in the first instance, and is another more appropriate forum for the relief sought herein. Finally, since Intervenor was a party to the bankruptcy proceedings it is only appropriate that the Court that issued the Stay Order of November 12, 1970 be the one to which its request for relief should be addressed.

POINT III

INTERVENOR HAS ADEQUATE REMEDY FOR RELIEF
IN BANKRUPTCY COURT UNDER BANKRUPTCY LAW

Intervenor states that in June 1974, it purchased the California realty (which may be affected by virtue of the filing of the November 12, 1970 Judgment of this Court in the Madera County Clerk's Office) from the Receiver in Bankruptcy of Winthrop Lawrence Corporation, the judgment debtor in these proceedings. Applicant does not state whether such purchase was made subject to the California lien. It was the Receiver of

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
MOTION OF INTERVENOR

that Court, the U.S. District Bankruptcy Court, Maryland, that acquired title and possession of the said California property by virtue of the Bankruptcy Laws (11 USC Sections 1 et. seg.) and also the same forum that issued the November 12, 1970 Stay Order of which applicant complains before this Court in its motion under FRCP Rules 24 and 60(b). Intevenor was a party to the Maryland Bankruptcy proceedings as a creditor and as such could have, and should still be able to appeal to the Maryland Bankruptcy Court for the relief sought before this Court.

It is submitted that the appropriate forum (in addition to the California Courts) for the relief sought by applicant is the Bankruptcy Court in Maryland. FRCP Rule 24 does not supersede the express provision of the Bankruptcy Law. (11 USC Sec. 1 et. seg.) and, therefore, parties to a bankruptcy proceeding who fail to appeal according to law cannot later become parties by intervention. Re Bender Bady Co. (1941 DC OHIO) 47 F Supp. 224.

POINT IVRULE 60(b) OFFERS NO BASIS FOR APPLICANT TO
COLLATERALLY ATTACK THE JUDGMENT

Pursuant to FRCP Rule 24(c) "Procedure", the pleading filed by Intervenor under Rule 60(b)4 based on allegations of a void judgment as the result of the Stay Order of November 12, 1970 is without merit. The same arguments above relating to venue are applicable here. Intevenor has no real interest

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
MOTION OF INTERVENOR

in the outcome of the litigation. There is no reason it should be concerned if plaintiff Crown Financial Corporation has a judgment against defendant Winthrop Lawrence Corporation. The mere act of obtaining a judgment has no direct bearing on any of Intervenor's interest in release of the lien filed in California that might be served under a Rule 60(b) order before this Court.

CONCLUSION

While the U.S. District Court Southern District New York has jurisdiction to entertain the motion, the relief requested ^{denied} should be based on wrong venue and improper collateral attack on a lawful judgment. Adequate remedy for the relief sought by applicant can be obtained in other judicial forums.

Respectfully submitted,

Law Office
STUART RODNEY WOLK
Attorney for Plaintiff
225 West 34th Street
New York, N.Y. 10001

OF COUNSEL:

ARTHUR E. NEUMAN
ALBERT M. GROSS

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR'S MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No.
70 Civ. 3884

-----x
CROWN FINANCIAL CORPORATION

CMM

Plaintiff,

- against -

WINTHROP LAWRENCE CORPORATION and

LAMMOT DU PONT COPELAND, JR.,

Defendants,

and DIVERSIFIED GENERAL, INC.

Intervenor
-----x

MEMORANDUM OF LAW IN SUPPORT OF
DIVERSIFIED GENERAL'S MOTION TO
INTERVENE AND MOTION TO VACATE
THE JUDGMENT AGAINST WINTHROP
LAWRENCE CORPORATION

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR'S MOTION

NATURE OF MOTION

Diversified General, Inc. (hereinafter, "Diversified") moves, pursuant to Federal Rules of Civil Procedure, Rule 24 (a)(2), for leave to intervene in this action. If leave to intervene is granted, then Diversified further moves to vacate the judgment entered against Winthrop Lawrence Corporation (hereinafter, "Winthrop Lawrence") pursuant to Federal Rules of Civil Procedure, Rule 60 (b)(4).

STATEMENT OF FACTS

In June of 1974 Diversified purchased 100 acres of real property located in Madera County, California from the Receiver in Bankruptcy of Winthrop Lawrence. Diversified has now learned that a judgment entered November 25, 1970 in the United States District Court for the Southern District of New York against Winthrop Lawrence, in the amount of \$297,116.54, in favor of Crown Financial Corporation (hereinafter "Crown") was registered with the Madera County Clerk on December 28, 1970 and represents a cloud upon Diversified's title to this real property.

The events leading up to the judgment of November 25, 1970 are as follows:

By order of this court dated October 28, 1970, summary judgment was granted in favor of Crown, upon Winthrop Lawrence's default in an action by Crown to recover upon a promissory note executed by Winthrop Lawrence to Crown on September 12,

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR'S MOTION

1969 in the amount of \$400,000. Said order of October 28, 1970 directed that a hearing and inquest were to be held to determine the amount of judgment to be entered against Winthrop Lawrence and pursuant to a hearing and inquest held on November 24, 1970, judgment in the amount of \$297,116.54 was entered on November 25, 1970 against Winthrop Lawrence in favor of Crown.

However, on November 10, 1970, prior to the inquest and hearing, and prior to entry of the final judgment, Winthrop Lawrence filed a petition under Chapter XI of the Federal Bankruptcy Act in the United States District Court for the District of Maryland, listing Crown as one of its creditors. On November 12, 1970 the Referee in Bankruptcy issued an order staying all actions against Winthrop Lawrence from commencing or continuing without prior consent of the Bankruptcy Court.

Therefore, the hearing and inquest of November 24, 1970 should not have been held and the judgment should not have been entered against Winthrop Lawrence on November 25, 1970. That void judgment, which was docketed by Crown in Madera County, constitutes a cloud upon the title to property now owned by Diversified and Diversified seeks leave to intervene in this action pursuant to FRCP Rule 24 (a) in order to move, pursuant to FRCP Rule 60 (b)(4) to vacate the judgment of November 25, 1970 on the grounds that is void.

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR'S MOTION

POINT IINTERVENOR HAS STANDING
PURSUANT TO FRCP RULE 24 (a)(2)

Rule 24 (a)(2), Federal Rules of Civil Procedure states that:

- "(a). Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action. . . .
(2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

The purpose of DIVERSIFIED'S motion to intervene is to permit them to move this Court to vacate the default judgment entered on November 25, 1970 against WINTHROP LAWRENCE. That judgment presently clouds title on property WINTHROP LAWRENCE transferred to DIVERSIFIED, by their receiver, with the permission of the referee in Bankruptcy of the Maryland District Court. DIVERSIFIED meets all three requirements:

- 1.) They are asserting an interest in the subject matter of this action, i.e. the property against which this judgment has been docketed and upon which this judgment constitutes a lien and cloud on title,
- 2.) The disposition of this action has, as a practical matter impeded the protection of that interest. The judgment

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entered against WINTHROP LAWRENCE and docketed against the property subsequently transferred to DIVERSIFIED is a cloud on DIVERSIFIED'S title

3.) The existing parties do not adequately represent DIVERSIFIED'S interests.

In Troger vs. Hiebert Contracting Co., 339 F.2d 530 (1st Cir. 1964) the Court permitted intervention by a third party because an attachment granted to the plaintiff was held to constitute a cloud on the title the intervenor was claiming to the attached property.

Similarly, in American Jerex Co. v. Universal Alum. Extrusions, Inc., 340 F. Supp. 524 (E. D. N. Y. 1972), property of the defendant was attached by the plaintiff in an action to recover a money judgment. The intervenor, a non-party assigned to the accounts receivable of the defendant moved to intervene and to vacate the attachment on the grounds that they were entitled to receive the proceeds of the attached accounts receivable and their interests would be impaired if they were not permitted to intervene to make the motion. In granting the motions the Court decided that FRCP Rule 24 (a) authorized intervention for the purpose of litigating an issue that appeared to be collateral to the main issue, i.e. vacating the attachments, and held that the intervention met all three of the requirements under Rule 24 (a).

It is submitted that DIVERSIFIED'S position is identical to that of the intervenors in these two cases and that the

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Court should grant them leave to intervene to protect their interest in the property affected by the judgment entered against WINTHROP LAWRENCE.

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POINT IITHE JUDGMENT SHOULD BE VACATED

Federal Rules of Civil Procedure Rule 60 (b)(4) provides:

"(b) On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void;"

This Court granted CROWN'S motion for summary judgment by an order dated October 28, 1970. Said order further stated that judgment was to be entered after a hearing and inquest were held to determine the amount of the judgment. That order of October 28, 1970 was not a final judgment in the action. In fact, it was not docketed in California against WINTHROP LAWRENCE'S property. The judgment entered on November 25, 1970 for \$297,116.54 which was filed in California against WINTHROP LAWRENCE'S property was in fact treated by CROWN as the final judgment. But that judgment was void because the hearing and inquest should not have been held after the Referee in Maryland issued his stay order. CROWN was on notice of the stay because they were listed as a creditor.

A. THE ORDER OF OCTOBER 28, 1970 WAS
NOT A FINAL JUDGMENT

The order of October 28, 1970 was not a final judgment. Under Rule 58 of the Federal Rules of Civil Procedure, a separate document must be in existence to constitute a final judgment which can be entered. In United States v. F. M.

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Schaefer Brewing Co., 356 U. S. 227 (1958) the Supreme Court, in deciding whether or not the time in which to file an appeal had run, held that the granting of a motion for summary judgment without findings of dates of payment or amount of interest and without a later formal document signed by the Judge and designated as a "Judgment" with specified amounts is not clearly ^{not} a final act ~~and~~ is not a judgment under the Federal Rules of Civil Procedure and cannot constitute entry of a judgment against a party under Rule 58. See generally, annot. 10 ALR Fed. 709, 712.

The Supreme Court re-affirmed this decision, in United States v. Indrelunas, 411 U. S. 216 (1973) where it stated, at p. 221;

" Here there was nothing meeting the requirements of the "separate document" provision of Rule 58 until February 25, 1971. The docket entry following the jury's verdict [on March 21, 1969] simply reflected the jury's determination as to the liability of the parties, without specifying an amount due. . . and was not recorded on a separate document . . .

The Court further stated that Rule 58 was a mechanical rule that must be mechanically applied to avoid uncertainties.

It is submitted that the order of October 28, 1970 was not a final judgment, and not capable of entry as such. This is borne out by CROWN'S action in docketing the later judgment, of November 25, 1970, the judgment which DIVERSIFIED contends is void as will be shown below.

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B. THE JUDGMENT OF NOVEMBER 25, 1970
IS VOID

Since the Maryland Bankruptcy Court effectively stayed all proceedings against WINTHROP LAWRENCE on November 12, 1970 and since CROWN had notice of that stay as a creditor listed on WINTHROP LAWRENCE'S petition, the present action should never have gone beyond the October 28, 1970 order, the hearing of November 24, 1970 should not have been held and the judgment of November 25, 1970 should never have been entered against WINTHROP LAWRENCE.

Once the stay was entered in Maryland, the hearing and inquest after the October 28, 1970 should never have been held. As it was stated in In Re Schachter, 143 F. Supp. 565 (S.D.N.Y. 1956):

"It is clear beyond cavil that the filing of a petition in bankruptcy, whether voluntary or involuntary, is a caveat to all the world that the property of the bankrupt, wherever situated, was at once in custodia legis, so that subsequent proceedings cannot be had in other Courts to reach such property. (Citations.)" [Emphasis Supplied].

Similarly, in In Re Oceanside Estates, Inc., 84 F. Supp. 114 (E.D.N.Y. 1948) a Chapter XI petition was filed at 9:18 a.m. and a state Court judgment entered at 3:26 p.m. on the same day. It was held . . . The lien against the property of the debtor in possession, therefore, was entered after the petition for arrangement was filed and must be nullified . . . "84 F. Supp. at 114.

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Or as stated in In Re Williams, 53 F.2d 486, 488:

" . . . Subsequent to filing the petition in bankruptcy, liens cannot be given or acquired on the property affected thereby..This is true whether the attempt be made through legal proceedings or by act of the bankrupt. (Citations.) . . ."

It is clear that the foregoing and numerous similar decisions furnish ample authority for the invalidation of the alleged lien, whether such decisions involve straight bankruptcy or, as herein, a Chapter XI arrangement proceeding (see 11 U.S.C. § 702). It is equally clear that it matters not where the bankrupt or debtor's real property happens to be physically located (In Re Riccobono, 140 F. Supp. 654 [S.D. Cal. 1956]). The rule remains the same, as well stated in Polish v. Johnson Service Company, 173 F. Supp. 776, 778:

"Once a petition in bankruptcy has been filed, all of the bankrupt's property passes into the custody of the bankruptcy court and is subject to its jurisdiction. This property of the bankrupt is said to be in custodia legis and neither the bankrupt nor its creditors can take any action with respect to it. . . ."

Or in the language of a California federal court (In re California Pea Products, 37 F. Supp. 658, 661):

" . . .The possession of the property by the trustee is the court's possession, and any act interfering with the court's power of control and disposal and done without the court's sanction is void. (Citation.)" [Emphasis Supplied].

Since the proceedings subsequent to October 28, 1970 were void, and since the judgment entered as a result of those pro-

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ceedings was the only judgment which could have been entered against WINTHROP LAWRENCE, the judgment of November 25, 1970 should be vacated in the interests of justice. In United States v. Melichor, 56 FRD 49 (E. D. Wis. 1972), the defendants moved to set aside a default judgment entered against them two years earlier. The court granted the motion and set aside the judgment on the grounds that the judgment entered by the plaintiff did not show a sum certain. The court further held that the judgment should not have been entered in that form, i.e. without a sum certain shown on its face, stating that although entry of the default was proper, the judgment entered thereon was not.

The Bankruptcy Court's order staying all proceedings against WINTHROP LAWRENCE must take precedence over the action of this court in entering the judgment subsequent to the stay order. As stated by the Supreme Court in Kalb v. Feuerstein, 308 U.S. 433 (1940) in an action brought to vacate a judgment of foreclosure obtained against farmers who had petitioned for a composition under the Federal Bankruptcy Act Section 75 (Frazier Lemke Act, 11 U.S.C. § 203):

"Thus Congress repeatedly stated its unequivocal purpose to prohibit - in the absence of consent by the bankruptcy court in which a distressed farmer has a pending petition-a Mortgagee or any court from instituting, or maintaining if already instituted, any proceedings against the farmer to sell under mortgage foreclosure, to confirm such a sale, or to dispossess under it." 308 U.S. at 441

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" . . . it becomes clear . . . that no proceedings after the filing of the petition could be instituted, or if instituted prior to the filing of the petition, should not be maintained in any court, or otherwise." 308 U.S. at 442

As demonstrated by the Supreme Court's words, the Bankruptcy Act protects the debtor from further proceedings in actions already commenced once the petition has been filed and the Bankruptcy Court accepts custody of the bankrupt's property . It is therefore clear that the entry of judgment against WINTHROP LAWRENCE on November 25, 1970 was void and should be vacated.

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POINT IIITHE APPLICATION FOR RELIEF
IS TIMELY MADE

Although it is unusual to permit intervention in an action after judgment, Turner v. Willard, 157 F. Supp. 451 (S.D.N.Y. 1957), United States v. Wilhelm Reich Foundation, 17 F.R.D. 96 (D.Me. 1954), aff'd, 221 F. 2d 957 (1st Cir. 1955) Cer. Den., 350 U. S. 842 (1955), it rests in the sound discretion of the Court, and where, as here, the only way to protect the interests of the proposed intervenor is to permit intervention, the Courts have permitted it, McDonald v. F. J. Lanino Company, 430 F.2d 1065 (5th Cir. 1970), even after judgment has been entered.

In McDonald, the Court permitted intervention by an insurance carrier after judgment had been entered to protect its subrogation rights and stated that the intervention did not prejudice the rights of the parties (because the funds had not yet been distributed) nor interfere with the orderly process of the courts. Mere inconvenience to the parties is not sufficient reason to deny intervention. Although DIVERSIFIED seeks to vacate the judgment entered on November 25, 1970, they do not wish to relitigate the motion for summary judgment, or even vacate the interlocutory order of October 28, 1970 granting summary judgment. They want to place the action back to the point at which the stay order of November 12, 1970 was entered in the Maryland District

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Court. CROWN can still attempt to show that the debt was not dischargeable in the Maryland Bankruptcy proceeding and can still retain their order of default - no prejudice can be shown to their legally existing rights possessed prior to the November 12, 1970 stay order.

Other cases which have held that the mere lapse of time since the action started is not critical and have permitted intervention after judgment are: Securities and Exchange Commission v. U. S. Realty and Improvement Co., 310 U. S. 434 (1940); McDonald v. E. J. Lavino Co., 430 F.2d 1065 (5th Cir. 1970); Smith Petroleum Service, Inc. vs. Monsanto Chemical Co., 420 F.2d 1103 (5th Cir. (1970); Liston v. Butler, 421 F. 2d 542 (Ariz., 1967).

CONCLUSION

For all of the above reasons, it is respectfully submitted that the motion for leave to intervene should be granted; and if granted the motion to vacate the judgment against WINTHROP LAWRENCE should be granted.

Respectfully submitted,

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Attorneys for Intervenor
Office & P. O. Address
22 East 40th Street
New York, New York 10016

OF COUNSEL:

Roy E. Pomerantz

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR'S MOTION

STATE OF NEW YORK)
)
 COUNTY OF NEW YORK) ss.:

MARY E. BOLGER, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at Bronx, New York.

That on the 5th day of May, 1975, deponent served the within Memorandum of Law upon:

PAUL S. AUFRICHTIG
 Attorney for Defendant
 WINTHROP LAWRENCE CORPORATION
 866 United Nations Plaza
 New York, New York 10017

WEILL, GOTSHAL & MANGES
 Attorneys for Defendant
 LAMMOT DU PONT COPELAND, JR.
 767 Fifth Avenue
 New York, New York 10022

STUART RODNEY WOLK
 Attorneys for Plaintiff
 CROWN FINANCIAL CORPORATION
 420 Lexington Avenue
 New York, New York 10017

in this action, at the address (es) designated by said attorney (s) for that purpose by depositing same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

Sworn to before me this

5th day of May, 1975.

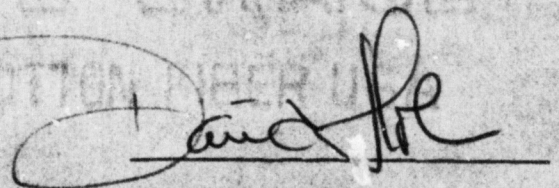
MARY E. BOLGER

MARTIN M. WEEN
 Notary Public in and for the State of New York

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

DAVID HOLMES, being duly sworn, deposes and says, that deponent is not a part to the action, is over 18 years of age and resides in Rockville Centre, New York.

That on the 27th Day of October, 1975, deponent served the within Joint Appendix and Main Brief of Intervenor-Appellant, Diversified General, Inc. upon Wolk, Neuman & Gross, Albert Gross, Esq., Attorneys for Plaintiff herein, CROWN FINANCIAL CORPORATION, at 225 West 34th Street, New York, New York 10001, by delivering a true copy of said Brief and Appendix to him personally. Deponent knew the person so served to be a member of the firm of Wolk, Neuman & Gross mentioned and described in said papers as the Attorneys for Plaintiff in this action.



DAVID HOLMES

Sworn to before me on

October 27, 1975



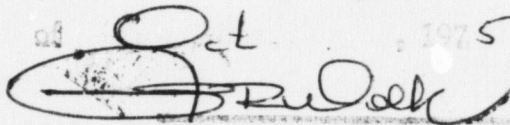
BRIAN A. SHERIDAN
Notary Public, State of New York
No. 31-4518095
Qualified in New York County
Commission Expires March 30, 1976

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... copies of
the within ... is

hereby admitted that 30 day

of Oct. 1975



Attorney for Def. Ogelle